



## MONTGOMERY COUNTY ETHICS COMMISSION

Rahul K. Goel  
*Chair*

Steven Rosen  
*Vice Chair*

**May 8, 2019**

### **Advisory Opinion 19-04-010**

You have inquired whether you may hire an attorney to prepare your will and related personal estate planning documents. One of the attorneys you have under consideration is an elder law attorney who you understand has represented persons in matters that fall under the scope of your supervisory responsibilities as a manager at Department of Health and Human Services (DHHS).

You are a manager at the DHHS with supervision responsibilities over several sections, one of which determines eligibility for certain benefits for Montgomery county residents. Some of these residents will elect to be represented by an attorney with respect to a benefit application or appeal of a staff member's eligibility determination. When there is an appeal, staff and the customer's attorney appear before an administrative law judge to argue the case. While you are not directly involved in the eligibility determinations or appeals, you, in theory, could become involved through the exercise of your supervisory responsibilities.

The County's ethics law prohibits County employees from working on matters where a party, and for purposes of this opinion, this includes an attorney for a party, has a contract with the public employee "if the contract could reasonably result in a conflict between private interests and official duties." 19A-11(a)(2)(E). Whether there would be an actual conflict between your official duties and your private interests if you were called upon to be involved in a matter where your private attorney was representing a party is difficult to determine. This is particularly the case where the Commission cannot account for all possible circumstances pursuant to which you would be involved in a matter where your private counsel was acting as attorney for a party (which you have indicated would be unusual).

The Commission has no objection to your private engagement of an attorney who may be engaged by other persons to represent them before a section that you supervise as a DHHS manager. But, this advisory opinion is conditioned on your staying away from or "recusal" from any County matter where your private attorney is representing any person. If you are called upon to be involved in any such matter, you must step aside and have your supervisor address the issue, with no input or involvement of yourself in the matter. You should inform your supervisor of this advisory opinion so that the supervisor is aware of the potential need for your recusal.

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This opinion does not address the obligations of the prospective attorney under Maryland bar rules. Those obligations are the responsibility of the attorney you hire. This opinion also does not address the theoretical circumstance of a private attorney hired by you attempting to leverage the representation of you to the advantage of the attorney's private clients, such as by the attorney conveying to your staff the fact of the private representation of you. This advisory presumes that there is high confidence that your staff would be unaffected in its decision making as a consequence of the private attorney-client relationship between you and counsel for a party to a matter handled by staff. If you learn that there is some reason to believe that this confidence is misplaced, please contact the Ethics Commission immediately. Of course, it would not be appropriate for you discuss County personnel or benefits cases with a private attorney hired to handle your private estate matters. Nor would it be appropriate for you to accept any break in attorney fees that would constitute a prohibited gift under the ethics law.

While the Commission acknowledges the somewhat precautionary tone of this advisory opinion, the Commission also recognizes that there are any number of private attorneys who provide the type of services you seek who do not represent clients who seek the type of benefits over which you have supervisory purview in your County position.

For the Commission:



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Rahul K. Goel